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IN THE US PATENT AND TRADEMARK OFFICE

May 15, 2003

#13
5/28/03
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Applicants: Andreas Hajek et al.

Title : Moulding Composition For The Production
Of Sanitary-Ware Components

Serial No.: 09/664 241

Group: 1713

Filed : September 18, 2000

Examiner: Egwim

Confirmation No. 4110

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPELLANT'S BRIEF ON APPEAL

Dear Sir:

This is an appeal from the decision of the Examiner dated
September 12, 2002, finally rejecting claims 1-13.

REAL PARTY IN INTEREST

The real party in interest is Blanco GmbH & Co. KG, the assignee of
the entire right, title and interest in the above application.

RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences known to Applicant or the
undersigned which will directly affect, or be affected by or have
a bearing on the Board's decision in the appeal.

STATUS OF CLAIMS

Claims 1-13 are pending and are the claims on appeal. These claims
appear in the Appendix.

STATUS OF AMENDMENTS

A response to the final rejection was filed and was entered.

SUMMARY OF THE INVENTION

Applicants' invention as defined by independent claim 1 is directed to a moulding composition for the production of a sanitary-ware component, comprising a methyl-methacrylate-based syrup and from 50 to 85% by weight, expressed in terms of the moulding composition, of an inorganic filler, wherein the moulding composition further comprises elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight, expressed in terms of the mass of the syrup (see page 1, lines 1-5 and page 2, 20-25).

Claim 2 depends from claim 1 and recites that the syrup comprises PMMA with a molecular weight (M_w) of from 50,000 to 250,000 in an amount of up to 20 % by weight, expressed in terms of the mass of the syrup (see page 3, lines 34-36).

Claim 3 depends from claim 1 and recites that the moulding composition contains a proportion of from 10 to 18 % by weight of the elastomer particles or elastomer particle aggregates, expressed in terms of the mass of the syrup (see page 2, lines 35-36 through page 3, lines 1-2).

Claim 4 depends from claim 1 and recites that the elastomer of the elastomer particles or elastomer particle aggregates consists of partially crosslinked polymer (see page 4, lines 3-4).

Claim 5 depends from claim 1 and recites that the elastomer particles have a core/shell structure, wherein the core is formed by an elastomer and the shell is formed from a matrix-compatible polymer which is essentially insoluble in the syrup (see page 4, lines 5-12).

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Claim 6 depends from claim 5 and recites that the shell is chemically bonded to the core elastomer (see page 4, lines 13-14).

Claim 7 depends from claim 5 and recites that the shell comprises a thermoplastic polymer (see page 4, lines 15-17).

Claim 8 depends from claim 5 and recites that the shell comprises a partially crosslinked polymer (see page 4, lines 3-4).

Claim 9 depends from claim 5 and recites that the shell is swellable in the syrup of the moulding composition (see page 4, lines 18-20).

Claim 10 depends from claim 5 and recites that the shell comprises an acrylate polymer (see page 4, lines 24-27).

Claim 11 depends from claim 5 and recites that the core consists of a partially cross-linked polysiloxane, which is grafted with an acrylate monomer to form the shell (see page 4, lines 24-27).

Claim 12 depends from claim 5 and recites that the proportion by weight of the core in the core/shell elastomer particles amounts to a proportion of from 40 to 60 % by weight (see page 4, lines 28-30).

Claim 13 depends from claim 1 and recites that the filler content is from 60 to 80 % by weight, expressed in terms of the moulding composition (see page 4, lines 31-34).

ISSUES

FIRST ISSUE

The first issue presented for review is whether the subject matter of claims 1-4 and 13 is anticipated under 35 USC 102(b) in view of Kreig et al. EP 639539.

SECOND ISSUE

The second issue presented for review is whether the subject matter of claims 5-7, 9, 10, and 12 is obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Hwa US Patent 3 661 994.

THIRD ISSUE

The third issue presented for review is whether the subject matter of claims 5-10 and 12 is obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Hofmann US Patent 4 180 529 or Henton et al. WO 88/05450.

FOURTH ISSUE

The fourth issue presented for review is whether the subject matter of claims 5-12 is obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Alsmarraie et al. US Patent 5 087 662.

GROUPING OF THE CLAIMS

Claims 1-13 do not stand or fall together. Claim 2 is separately patentable from claim 1 in reciting that the syrup comprises PMMA with a molecular weight (M_w) of from 50,000 to 250,000 in an amount of up to 20 % by weight, expressed in terms of the mass of the syrup. Claim 3 is separately patentable in reciting that the moulding composition contains a proportion of from 10 to 18 % by weight of the elastomer particles or elastomer particle aggregates, expressed in terms of the mass of the syrup. Claim 4 is separately patentable in reciting that the elastomer of the elastomer

particles or elastomer particle aggregates consists of partially crosslinked polymer. Claim 5 is separately patentable in reciting that the elastomer particles have a core/shell structure, wherein the core is formed by an elastomer and the shell is formed from a matrix-compatible polymer which is essentially insoluble in the syrup. Claim 6 is separately patentable from claims 1 and 5 in reciting that the shell is chemically bonded to the core elastomer. Claim 7 is separately patentable in reciting that the shell comprises a thermoplastic polymer. Claim 8 is separately patentable in reciting that the shell comprises a partially crosslinked polymer. Claim 9 is separately patentable in reciting that the shell is swellable in the syrup of the moulding composition. Claim 10 is separately patentable in reciting that the shell comprises an acrylate polymer. Claim 11 is separately patentable in reciting that the core consists of a partially cross-linked polysiloxane, which is grafted with an acrylate monomer to form the shell. Claim 12 is separately patentable in reciting that the proportion by weight of the core in the core/shell elastomer particles amounts to a proportion of from 40 to 60 % by weight. Claim 13 is separately patentable from claim 1 in reciting that the filler content is from 60 to 80 % by weight, expressed in terms of the moulding composition.

See on 1st page 12/10/09

ARGUMENT

FIRST ISSUE:

The rejection of claims 1-4 and 13 as anticipated under 35 USC 102(b) in view of Kreig et al. EP 639539 is in error.

The examiner alleges that the '539 EP document discloses 1 to 20% of a solid particulate polymer (PP) with particles ranging from 0.13 to 0.15 mm. The examiner then proceeds outside the EP '539

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document alleging that the EP '539 document defines the particles PP as being of the type of Fink German DE 2135828 document. The examiner alleges that the '828 document teaches solid particulate polymers to be elastomers. The '828 German document appears to correspond to US Patent 3 870 557.

Applicants firstly would point out that the '539 document does not disclose Applicants' claimed moulding composition for the production of a sanitary-ware component having in combination, 50 to 85 weight % inorganic filler particles and elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight, expressed in terms of the mass of the syrup, in a methyl-methacrylate-based syrup.

For example, column 5, lines 27-50 of the EP '539 document (page 11, second full paragraph of the English translation used by the examiner) expressly defines the particles PP by their chemistry or composition. In particular, the English translation states there that the particulate polymerizate PP preferably comprises "an acrylic resin, in particular PMMA or a copolymerizate of MMA...". The '539 patent thus is grossly deficient with respect to Applicants' claims 1-4 and 13.

The examiner argues in the final rejection that Applicant "points out an example of Kreig outside the scope of the present claims, it is noted that the prior art teachings are not limited to examples". Applicants respond that the '539 document expressly discloses particulate polymerizate PP comprising acrylic resin; particularly at page 11, second full paragraph and at Example 1 of the English translation used by the examiner. That is, the detailed example and the broader disclosure of the '539 document both expressly teach acrylic resin particulate polymerizate PP, which the examiner

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acknowledges is outside of Applicants' pending claims.

The examiner's reliance on the Fink DE-A2135828 document to remedy the deficiencies of the '539 document with respect to the description of the particulate polymerizate PP is misplaced. For example, Applicants refer to column 5, lines 51-58 through column 6, lines 1-5 of the EP '539 document (page 12, first full paragraph of the English translation used by the examiner) where the particles PP are defined by their particle size feature. The '539 document indicates that polymer beads or particles PP of suitable size can be made by suspension (pearl) polymerization process as described in the Fink German DE 2135828. The '539 patent does not disclose that the particles PP have the composition of the particles of the Fink '828 document, but instead that the particles PP can be made in the suitable particle size using the suspension (pearl) polymerization process of the Fink '828 document.

Further, the Fink '828 document does not relate to a moulding composition for production of a sanitary-ware component but instead relates to soft synthetic resin particles dispersed in water for application to textile webs and other web materials (see corresponding Fink US Patent 3 870 557). The examiner's reliance on the Fink '828 document is believed misplaced and incorrect.

Moreover, the reliance on the Fink '828 document smacks of a hindsight analysis of Applicants' claims 1-4 and 13 since the '539 document expressly teaches use of particulate polymerizate PP of acrylic resin and nowhere suggests to use a combination of elastomer particles or elastomer particle aggregates and inorganic filler in the amounts and size recited and refers to the Fink '828 document only for a teaching of how to make particles PP of suitable size.

As mentioned above, column 5, lines 27-50 of the EP '539 document (page 11, second full paragraph of the English translation used by the examiner) expressly defines the particles PP by their chemistry or composition as acrylic resins, especially particles of PMMA or a copolymer of a material with acrylate.

The '539 document simply does not disclose a moulding composition for the production of a sanitary-ware component having in combination, 50 to 85 weight % inorganic filler particles and elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight, expressed in terms of the mass of the syrup, in the methyl-methacrylate-based syrup.

Applicants also would refer to page 2, paragraphs 3 and 4 of Applicants' specification where the moulding composition is described as comprising the combination of the recited amount of inorganic filler and the elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight in the syrup to improve resistance of a molded sanitary-ware component to scratching and abrasion in a manner not disclosed in the EP '539 document or the Fink '828 document.

Neither document discusses how to improve resistance of a molded sanitary-ware component to scratching and abrasion.

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The examiner alleges that the composition of the EP '359 document or the Fink '828 document would inherently have improved resistance to scratching and abrasion. However, Applicants believe this allegation is unsupported, speculative and incorrect since neither cited reference discloses Applicants' moulding composition comprising the combination of the recited amount of inorganic filler and the elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight in the syrup. The EP '539 document is devoid of elastomer particles or elastomer particle aggregates, while the '828 document involves an aqueous suspension of soft synthetic resin devoid of inorganic filler for application to a porous web structure for web strengthening purposes.

Applicants have defined particular amounts of inorganic filler and elastomer particles or elastomer particle aggregates having a particular particle size in the syrup in claims 1-4 and 13 to achieve improved resistance to scratching and abrasion not disclosed by the EP '539 document or the Fink '828 document. The cited '539 document as well as Fink '828 document are utterly silent in this regard.

SECOND ISSUE:

The rejection of claims 5-7, 9, 10, and 12 as obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Hwa US Patent 3 661 994 is in error.

The deficiencies of the Kreig EP '539 document are pointed out above. As mentioned, column 5, lines 27-50 of the '539 document (page 11, second full paragraph of the English translation used by the examiner) expressly describes the particles PP by their

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chemistry or composition as acrylic resins. The '539 document does not suggest to use a combination of elastomer particles or elastomer particle aggregates and inorganic filler in the syrup, and only refers to the Fink '828 document for the teaching of how to make polymer beads or particles PP of suitable size.

The '994 patent discloses reinforcing of rigid plastics with rubber polymers without the presence of inorganic filler particles. For example, the '994 patent discloses to reinforce a PMMA matrix with rubber polymer particles. The '994 patent does not disclose or suggest Applicants' claimed moulding composition for the production of a sanitary-ware component having the recited combination of inorganic filler and elastomer particles or elastomer particle aggregates in the methyl-methacrylate-based syrup.

Neither the '539 document nor the '994 patent discloses or suggests Applicants' claimed moulding composition having the recited combination of inorganic filler and elastomer particles or elastomer particle aggregates in amounts and particle size in a methyl-methacrylate-based syrup.

The examiner's argument that it would have been obvious to use multi-graft copolymer particles as taught in the '994 patent as the polymer particles PP in the '539 document by virtue of reasonable expectation of success is believed to be in error and violative of the *Grahm v. Deere* decision. Firstly, the examiner ignores that neither the '539 document nor the '994 patent discloses or suggests the combination of inorganic filler and elastomer particles or elastomer particle aggregates in a methyl-methacrylate-based syrup to provide a moulding composition for the production of a sanitary-

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ware component as set forth in Applicants' claims. There is simply no motivation or teaching in either cited reference that would lead one skilled in the art to employ elastomer particles or elastomer particle aggregates in the '539 document, much less elastomer particles having a core/shell structure as set forth in Applicants' claims 5-7, 9, 10, and 12.

Secondly, the examiner's proposed use of the multi-graft copolymer particles of the '994 patent in the '539 document based on a reasonable expectation of success is an incorrect basis for combining the references and violative of the *Graham v. Deere* decision, especially when neither cited reference discloses or suggests the combination of inorganic filler and elastomer particles or elastomer particle aggregates in a methyl-methacrylate-based syrup.

Moreover, the '994 patent teaches to add only multi-graft copolymer particles to overcome disadvantages associated with prior use of rubber particles that adversely affect material properties such as tensile strength, clarity, heat distortion temperature, hardness and aging stability. Neither cited reference discloses or suggests Applicants' moulding composition for the production of a sanitary-ware component comprising the combination of the recited amount of inorganic filler and the elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight in the syrup to improve resistance of the molded sanitary-ware component to scratching and abrasion.

Neither cited reference discusses how to improve resistance of a molded sanitary-ware component to scratching and abrasion. Applicants fail to see how there can be a reasonable expectation of improvements achieved by Applicants' moulding composition when neither cited reference discloses or suggests the combination of

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inorganic filler and elastomer particles or elastomer particle aggregates in the syrup and neither reference discusses how to improve resistance of a molded sanitary-ware component to scratching and abrasion.

THIRD ISSUE:

The rejection of claims 5-10 and 12 as obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Hofmann US Patent 4 180 529 or Henton et al. WO 88/05450 is in error.

The deficiencies of the Kreig EP '539 document are pointed out above. As mentioned, column 5, lines 27-50 of the '539 document (page 11, second full paragraph of the English translation used by the examiner) expressly describes the particles PP by their chemistry or composition as acrylic resins.

The '539 document expressly does not suggest to use elastomer particles or elastomer particle aggregates and inorganic filler in recited amounts and particle size to provide a moulding composition for the production of a sanitary-ware component, and only refers to the Fink '828 document for teaching of how to make polymer beads or particles PP of suitable size.

The cited secondary '529 patent and '450 document both suffer from the same deficiencies as the '994 patent in that neither discloses or suggests Applicants' recited combination of inorganic filler and elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight, expressed in terms of the mass of the syrup, in a methyl-methacrylate-based syrup. Both the cited '529 patent and '450 document are devoid of inorganic fillers in an amount of 50 to 85 % by weight.

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As a result, there is no motivation or teaching in any of the cited references that would lead one skilled in the art to employ elastomer particles or elastomer particle aggregates in the '539 document, much less elastomer particles having a core/shell structure as set forth in Applicants' claims 5-10 and 12.

The examiner's proposed use of the particles of the secondary '529 patent or '450 patent in the '539 document based on a reasonable expectation of success is an incorrect basis for combining the references and violative of the *Graham v. Deere* decision, especially when none of the cited references discloses or suggests the combination of inorganic filler and elastomer particles or elastomer particle aggregates in a methyl-methacrylate-based syrup.

None of the cited references discloses or suggests Applicants' moulding composition for the production of a sanitary-ware component comprising the combination of the recited amount of inorganic filler and the elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight in the syrup to improve resistance of the molded sanitary-ware component to scratching and abrasion. Not one of the cited references discusses how to improve resistance of a molded sanitary-ware component to scratching and abrasion. Applicants fail to see how there can be a reasonable expectation of improvements achieved by Applicants' moulding composition when none of the cited references discloses or suggests the combination of inorganic filler and elastomer particles or elastomer particle aggregates in recited amounts and particle size in the syrup, and none of the cited references discusses how to improve resistance of a molded sanitary-ware component to scratching and abrasion.

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FOURTH ISSUE:

The rejection of claims 5-12 as obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Alsmarraie et al. US Patent 5 087 662 is in error.

The deficiencies of the Kreig EP '539 document are pointed out above. As mentioned, column 5, lines 27-50 of the '539 document (page 11, second full paragraph of the English translation used by the examiner) expressly describes the particles PP by their chemistry or composition as acrylic resins.

The '662 patent does not disclose or suggest Applicants' recited combination of inorganic filler in an amount from 50 to 85% by weight of the moulding composition, and elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight, expressed in terms of the mass of the syrup, in a methyl-methacrylate-based syrup to provide a moulding composition for the production of a sanitary-ware component.

The examiner's proposed use of the core/shell particles of the '662 patent in the '539 document based on a reasonable expectation of success is an incorrect basis for combining the references and violative of the *Grahm v. Deere* decision.

Neither of the cited references discloses or suggests Applicants' moulding composition for the production of a sanitary-ware component comprising the combination of the recited amount of inorganic filler and the elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight in the syrup to improve resistance of the molded sanitary-ware component to scratching and abrasion. Neither of the cited references

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discusses how to improve resistance of a molded sanitary-ware component to scratching and abrasion. Applicants fail to see how there can be a reasonable expectation of improvements achieved by Applicants' moulding composition when neither of the cited references discloses or suggests the combination of Applicants' recited inorganic filler and elastomer particles or elastomer particle aggregates in recited amounts and particle size in the syrup and neither of the cited references discusses how to improve resistance of a molded sanitary-ware component to scratching and abrasion.

CONCLUSION

FIRST ISSUE

It is respectfully submitted that pending claims 1-4 and 13 are not anticipated under 35 USC 102(b) by Kreig et al. EP 639539.

SECOND ISSUE

It is respectfully submitted that pending claims 5-7, 9, 10, and 12 are not obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Hwa US Patent 3 661 994.

THIRD ISSUE

It is respectfully submitted that pending claims 5-10 and 12 are not obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Hofman US Patent 4 180 529 or Henton WO 88/05450.

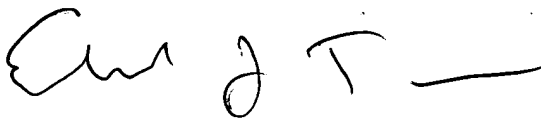
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FOURTH ISSUE

It is respectfully submitted that pending claims 5-12 are not obvious under 35 USC 103(a) in view of Kreig et al. EP 639539 taken with the Alsmarraie US Patent 4 180 529.

Respectfully submitted,

IN TRIPLICATE

A handwritten signature in cursive script, appearing to read "E J Timmer", written in dark ink.

Edward J. Timmer Reg. No. 24 702

Encl. Appendix and Postal Card

APPENDIX

1. Moulding composition for the production of a sanitary-ware component, comprising a methyl-methacrylate-based syrup and from 50 to 85% by weight, expressed in terms of the moulding composition, of an inorganic filler, characterized in that the moulding composition furthermore comprises elastomer particles or elastomer particle aggregates having a particle size smaller than 100 μm in an amount in the range of 5% by weight to less than 20% by weight, expressed in terms of the mass of the syrup.

2. Moulding composition according to Claim 1, characterized in that the syrup comprises PMMA with a molecular weight (M_w) of from 50,000 to 250,000 in an amount of up to 20 % by weight, expressed in terms of the mass of the syrup.

3. Moulding composition according to Claim 1, characterized in that it contains a proportion of from 10 to 18 % by weight of the elastomer particles or elastomer particle aggregates, expressed in terms of the mass of the syrup.

4. Moulding composition according to Claim 1, characterized in that the elastomer of the particles or aggregates consists of partially crosslinked polymer.

5. Moulding composition according to Claim 1, characterized in that the elastomer particles have a core/shell structure, the core being formed by an elastomer and the shell from a matrix-compatible polymer which is essentially insoluble in the syrup.

6. Moulding composition according to Claim 5, characterized in that the shell is chemically bonded to the core elastomer.

APPENDIX - page 2

7. Moulding composition according to Claim 5, characterized in that the shell comprises a thermoplastic polymer.

8. Moulding composition according to Claim 5, characterized in that the shell comprises a partially crosslinked polymer.

9. Moulding composition according to Claim 5, characterized in that the shell is swellable in the syrup of the moulding composition.

10. Moulding composition according to Claim 5, characterized in that the shell comprises an acrylate polymer.

11. Moulding composition according to Claim 5, characterized in that the core consists of a partially cross-linked polysiloxane, which is grafted with an acrylate monomer to form the shell.

12. Moulding composition according to Claim 5, characterized in that the proportion by weight of the core in the core/shell elastomer particles amounts to a proportion of from 40 to 60 % by weight.

13. Moulding composition according to Claim 1, characterized in that the filler content is from 60 to 80 % by weight, expressed in terms of the moulding composition.



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Commissioner for Patents

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Alexandria, VA 22313-1450

LETTER TRANSMITTING APPEAL BRIEF FEE

Dear Sir:

Enclosed is a check for \$320.00 for the fee for submission of the appeal brief.

The Commissioner is hereby authorized to any deficiency in the fee for filing of the enclosed Appellant's Brief on Appeal to Deposit Account No. 20-1124. In the event that an extension of time needs to be obtained to timely file the Brief on Appeal, Applicants so petition and authorize the Commissioner to charge any additional fee for a time extension to Deposit Account No. 20-1124. A duplicate of this sheet is enclosed.

Respectfully submitted,

Edward J. Timmer

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Dear Sir:

I hereby certify that the correspondence set forth below is being deposited with the United States Postal Service under 37 CFR 1.8 as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 19 2003.

Respectfully submitted,

Edward J. Timmer

Walnut Woods Centre

5955 W. Main Street

Kalamazoo, MI 49009

correspondence - Appellant's Brief on Appeal with Appendix
in triplicate
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in duplicate
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